

**REMARKS**

Claims 49-52, 55, 71-73, 76, 80, 84, 166-172, 176-181, 217, and 218 are pending in the present application. In this response, no claims have been amended, added, or cancelled.

Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections in view of the following remarks.

**Rejections under 35 U.S.C. § 103**

Claims 49-52, 55, 71-73, 76, 80, 84, 166-172, 176-179, 217, and 218 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 4,647,544 (hereinafter "Nicoli") in view of U.S. Patent No. 4,929,400 (hereinafter "Rembaum"). This rejection is respectfully traversed.

Independent claim 49 recites a population of scattered light-detectable gold particles, wherein the coefficient of variation in size within said population is less than 5%. The gold particles of claim 49 comprise a surface coat of gold. The gold particles have a diameter of from about 10 nm to about 140 nm and have maximum absorption wavelengths of from about 525 nm to about 635 nm. Further, the gold particles of claim 49 have at least one additional material on their surfaces.

Nicoli relates to an apparatus and a method for providing an optical detection of a binding reaction. (Abstract). The Examiner's position is that Nicoli discusses "colloidal gold particles which have been coated with a variety of macromolecules such as avidin, lectins, IgG in the size range of 20 to 500 nm (column 15, lines 25-35)." (Office Action, Page 3).

The Examiner concedes that Nicoli fails "to teach that the coefficient of variation in size of the population of particles is less than 5%". (Office Action, Page 3). Accordingly, the Examiner cites Rembaum as allegedly disclosing "microspheres comprising materials such as silver, gold, and polyHEMA...varying no more than plus or minus 1% (column 3, lines 65-68)." (Office Action, Page 3).

Rembaum merely discusses "[p]olymeric microspheres, having precise size range with diameters varying no more than plus or minus 5 percent, usually plus or minus 1 percent from an average size, are recovered." (Col. 3, lines 65-68). Rembaum's discussion regarding "polymeric microspheres" is in relation to a one-step process described in Rembaum to produce polymeric microspheres using hydrophilic monomers. (See discussion of these microspheres in Col. 3, lines 37-65). Like Nicoli, Rembaum does not disclose or suggest a population of scattered light-detectable gold particles having a coefficient of variation in size of less than 5%.

Accordingly, Nicoli and Rembaum, either alone or in combination, fail to disclose or suggest a population of scattered light-detectable gold particles having a coefficient of variation in size of less than 5%.

As Nicoli and Rembaum, either alone or in combination, fail to disclose or suggest all features recited in independent claim 49, a *prima facie* case of obviousness of independent claim 49 has not been established. Claims 50-52, 55, 71-73, 76, 80, 84, 166-172, 176-181, and 217 depend either directly or indirectly from independent claim 49. Therefore, claims 50-52, 55, 71-73, 76, 80, 84, 166-172, 176-181, and 217, are patentable over Nicole and Rembaum for at least the same reasons.

In view of at least the foregoing, the obviousness rejection over Nicoli and Rembaum should be withdrawn.

Claims 180 and 181 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Nicoli in view of Rembaum and further in view of U.S. Patent No. 5,567,628 (hereinafter "Tarcha"). This rejection is respectfully traversed.

The discussion hereinabove regarding Nicoli and Rembaum is herein incorporated in its entirety.

Tarcha has been cited to teach the limitations of claims 180 and 181 in combination with Nicoli and Rembaum. Tarcha does not disclose or suggest light-detectable gold particles having a coefficient of variation in size of less than 5%. Thus, Tarcha does not cure the above-noted deficiencies of Nicoli and Rembaum. The cited references fail to disclose or suggest the features recited in claims 180 and 181 for at least the same reasons as those discussed hereinabove. Accordingly, the rejection of claims 180 and 181 should be withdrawn for at least the same reasons.

### **Conclusion**


Applicants invite the Examiner to contact Applicants' representative at the telephone number listed below if any issues remain in this matter, or if a discussion regarding any portion of the application is desired by the Examiner.

In the event that this paper is not timely filed within the currently set shortened statutory period, Applicants respectfully petition for an appropriate extension of time. The fees for such extension of time may be charged to our Deposit Account No. 02-4800.

In the event that any additional fees are due with this paper, please charge  
our Deposit Account No. 02-4800.

Respectfully submitted,

Date: December 12, 2008

By:   
Shruti S. Costales  
Registration No. 56,333

**Customer No. 21839**  
P.O. Box 1404  
Alexandria, VA 22313-1404  
(703) 836-6620